

The complaint

X complains that HSBC UK Bank Plc won't refund money he lost to a binary options investment scam.

What happened

Around April 2017, X came across Lionexo and TradersVIP (T) via a social media advert. He contacted them and they convinced him that investing with them would earn him a lot of money. T persuaded X that their expertise along with the Lionexo trading platform would be a very profitable investment with excellent returns. X had recently sold his house and was interested to earn some profits with his money and T said they could earn large profits quickly which would enable X to have a bigger house deposit to buy a better house in a good location.

X felt it was a legitimate investment because T called him from UK Landline numbers and explained they had offices in London and Liverpool. They showed him the trading account which X found to be impressive, with real results which convinced him to invest.

Between 26 April 2017 to 28 April 2017, X invested (£202.70, £7,914.24 and £4,045.91) onto his Lionexo trading account via an account with another banking provider (Bank A). He saw good profits and was permitted small withdrawals.

X was persuaded to make larger payments in June 2017 as T told him his account would reach a VIP status and they would 'hedge' his investments so that he couldn't lose. Between June 2017 to October 2017, X used his Visa debit card – linked to his HSBC current account – to make ten payments to his Lionexo trading account (via a payment processor) totalling £46,514.61.

X understood that his investments would be for medium-term trades and made six out of ten of his HSBC payments in June 2017 and July 2017. Around October 2017, T got in touch with X to offer him a further investment which had risen suddenly, so he made four further payments to them.

X continued to invest larger sums onto his Lionexo trading account via Bank A until December 2017. He was permitted some further withdrawals to his Bank A account which kept him investing.

After seeing that his funds had grown and reached a sizeable amount, X attempted to withdraw his funds towards the end of January 2018/beginning of February 2018. When he did so, Lionexo wouldn't permit his withdrawals and T would instead push him to invest further.

T was aware that X was looking to purchase a new home and convinced him that he should leave his funds on his Lionexo trading account until he was ready to do so. However, despite previously only having success with his investments, within a few days of attempting to withdraw, T told X that all of his investments and profits had been lost to 'bad investments' – despite being told his VIP status meant he couldn't lose funds. Lionexo and T subsequently

disappeared and X contacted HSBC for assistance with recovering his money around March 2018.

HSBC explained it couldn't assist X with chargeback claims as it was out of time to raise them in accordance with Visa's rules. Unhappy with HSBC's response, X referred his complaint to this office.

One of our Investigators felt that HSBC should refund X's money on the basis that a chargeback claim would have likely succeeded. HSBC didn't agree and argued that it stood no reasonable prospect of success through the Visa chargeback scheme.

On 1 June 2022, I issued my provisional decision not upholding this complaint. For completeness, I repeat my provisional findings (which form part of this final decision) below:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I don't intend to uphold it and I'll explain why.

Chargeback

I don't think HSBC acted unfairly by not processing chargeback claims on behalf of X. At the point of X's HSBC payments to Lionexo, the Visa chargeback scheme could only consider chargeback claims to investment traders if the cardholder (X) could provide evidence that the merchant (Lionexo/T) expressly promised or guaranteed an amount of profit he was due to receive. I've noted most of X's interactions with T was over the phone and they made no written promises/guarantees of profits.

X would needed to have approached HSBC within 120 days of the date of his transaction with the required evidence in order to validly dispute it. I've noted he contacted HSBC more than 120 days after the date of his last transaction, so HSBC didn't act unfairly by choosing not to raise chargeback claims on his behalf – because he was out of time.

Fraud prevention

HSBC is aware of our general position on a PSP's safeguarding and due-diligence duties to protect customers from the risk of financial harm due to fraud. We have published many decisions on our website setting out these principles and quoting the relevant rules and regulations. It is unnecessary to rehearse them again here in detail.

It is common ground that the disputed payments were 'authorised' by X for the purposes of the Payment Services Regulations 2009 ('the Regulations'), in force at the time. This is because they were made by X using the legitimate security credentials provided to him by HSBC.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider HSBC should fairly and reasonably:

- Have been monitoring accounts—and any payments made or received—to counter various risks, including anti-money-laundering, countering the financing of terrorism, and preventing fraud and scams;*
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is*

particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and

- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.
- Updated its internal watchlist to include information from credible sources within a month of any adverse publication. Credible sources include information published on the FCA's watch list or the International Organization of Securities Commissions (IOSCO) Investor Alerts Portal.

I'm satisfied that Lionexo were likely scammers. I say this because they were required to be regulated by the UK's Gambling Commission at the time of X's payments and they were not, nor were they regulated anywhere else as far as I'm reasonably aware. A legitimate company would tend to comply with regulatory requirements.

The Financial and Consumer Affairs Authority of Saskatchewan (Canada) published a Temporary Cease Trade Order against them in April 2018 (after X made all of his payments).

I've further seen multiple negative reviews about Lionexo that repeat X's experience with them and they, along with their website, disappeared shortly after X requested withdrawals.

I've not found any regulatory warnings or credible adverse information about T but taking their correspondence with X into account, I think it's likely they too were scammers.

As I'm satisfied Lionexo/T were scammers, I need to consider whether HSBC should have flagged his payments to Lionexo.

Whilst HSBC ought to be alert to potential fraud and scams, there are factors that can influence how it decides to flag payments. One of those factors include what it knows about the payee, other factors include what it knows about its customers and what's 'normal' account usage for them. In this case, there were no warnings about Lionexo and X's payments didn't go to them directly, so I don't think it could have reasonably been aware that they were potential scammers.

I've included a table of some of X's payments to Lionexo from his HSBC current account:

Date	Payee	Payment method	Amount
16 June 2017	Lionexo (via a payment processor)	HSBC Visa debit	£8,098.60
16 June 2017	Lionexo (via a payment processor)	HSBC Visa debit	£8,099.23
16 June 2017	Lionexo (via a payment processor)	HSBC Visa debit	£4,049.30
16 June 2017	Lionexo (via a payment processor)	HSBC Visa debit	£4,050.63
16 June 2017	Lionexo (via a payment processor)	HSBC Visa debit	£4,052.47

The initial payment was a large sum of money to pay out of an account but I don't think it was particularly unusual for X as he'd previously paid larger sums from his account. But I think HSBC ought to have flagged the second payment on the same day as this was to a new payee, an overseas payment and looked unusual in relation to X's normal account spend and I think HSBC ought to have intervened. I requested evidence from HSBC to

confirm whether it had intervened and it explained it didn't hold any evidence to show this due to the time that has passed, so I've concluded that there was no intervention.

If HSBC had fulfilled its duties by asking suitably probing questions, there is no reason to doubt that X would have explained what he was doing. In such circumstances, whilst the bank had no duty to protect him from a bad bargain or give investment advice, it could have explained to him the very high risks of getting involved with unregulated and unlicensed binary options dealers. It could have also explained its own customer experiences with unregulated and unlicensed high-risk investment traders in that customers would often be prevented from withdrawing available balances.

If HSBC had asked X what the payment was for and the basic surrounding context, it is likely he would have fully explained that he'd been working with his broker for a few months and had already invested with them. HSBC did not need to know for certain whether X was dealing with a fraudulent high risk investment trader or investing in a legitimate (albeit highly speculative) product; reasonable grounds for suspicion are enough to trigger a bank's obligations under the various regulations and principles of good practice. I consider there were such grounds here and, therefore, that HSBC ought reasonably to have provided a scam warning in light of all the information then known to financial professionals about the risks associated with unregulated forex and binary options dealers.

If HSBC had given a warning, I don't think it would have made a difference to X. He felt Lionexo were legitimate and had offices in London and Liverpool. He was also persuaded that their impressive trading platform was legitimate. At the point of his second HSBC Visa debit card payment, he'd already invested with them since April 2017 and was permitted withdrawals. He intended to leave his investment over a medium term, so he didn't need his money straight away and was seeing only positive growth on his trading platform. There was no adverse information published about Lionexo or T and by X's own admission, he had no reason to suspect anything was untoward until January 2018/February 2018 (after he'd made all of his payments). X also explained that Lionexo honoured later withdrawals upon his request which reassured him of the authenticity of the website. So in absence of any adverse information about Lionexo/T, even if X raised HSBC's concerns with T at the point of the second payment, I think they would have simply reassured him by permitting further withdrawal requests. I'm not persuaded that a warning from HSBC in June 2017 would have stopped X in his tracks.

I also don't think X's further payments in October 2017 would have looked unusual to HSBC as he'd already paid similar amounts to Lionexo in June 2017. So I don't think it was required to intervene any further.

Because I don't think a warning would have made a difference, I don't intend to ask HSBC to refund any of X's disputed payments. I appreciate this will come as a great disappointment to X because he has lost a considerable sum of money and I have every sympathy for that.

But I don't think HSBC's mistake by not providing a scam warning was the primary cause of X's loss. I think X was convinced the investment was legitimate and would have proceeded with his payments until Lionexo gave him cause for concern – which didn't happen until much later.

Responses to my provisional decision

HSBC didn't reply to my provisional decision.

X replied and didn't accept it. In summary he said:

- The provisional decision is in complete contradiction of our Investigators opinion.
- Most victims will not realise there is a problem until they are blocked from withdrawing their available balances from their trading platforms.
- Under reason code 53, Visa allows chargebacks to be processed within 120 days of the cardholder expecting to receive the service but not to exceed 540 days from the transaction date. Therefore, HSBC should have processed chargeback claims.
- HSBC lied throughout the process and informed X it had processed chargeback claims but it did not.
- HSBC is at fault and has shown partnering with fraudulent traders by not processing chargeback claims.
- X should not only be refunded the loss but should receive compensation for harassment, psychological trauma and delay in recovering his money.

Having reviewed X's response to my provisional decision, I considered that HSBC should pay compensation for the way it handled X's chargeback claim requests. I wrote to HSBC and X explaining that X had first raised his chargeback requests in March 2018. He made multiple calls to follow this up until he received signed declarations in June 2018 – which he duly completed. HSBC told him he'd receive his money back within a couple of days (presumably temporary credits while HSBC disputed the claim). The matter was referred to HSBC's specialist team in August 2018 who requested further evidence from X (a copy of his trading account) at which point X advised he could no longer access it. HSBC told X in October 2018 that it couldn't investigate his claims prior to 14 October 2017. It then advised in a subsequent letter that it could only investigate two payments dated 16 October 2017.

I found that HSBC gave X incorrect and misleading advice throughout the chargeback process. I think it ought to have requested the necessary evidence when X requested chargeback claims be processed. And it could have advised him much sooner that it had no valid chargeback grounds for any of the payments as X didn't have the required evidence and the majority of X's payments were out of time for chargebacks to be processed in accordance with Visa's rules. This was a significant amount of money for X and he'd clearly gone to great effort to gain assistance from HSBC to help recover his payments.

I think this would have caused X a considerable amount of trouble and upset and I suggested HSBC pay £500 compensation to recognise the impact this would have had on X.

I invited both parties to reply with any final comments.

HSBC nor X replied, so I'll proceed with my final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I mostly don't uphold X's complaint.

X's response to my provisional decision largely focussed on the prospect of success of his chargeback claims. So, I've considered that again.

On 11 January 2018, Visa published Visa Business News 'Dispute-Related Hot Topics – January 2018'. Visa allowed card issuers (HSBC) to process chargeback claims under Reason Code 53 if *'the issuer could provide written documentation from the merchant guaranteeing an amount of profit/return the cardholder was to receive'*. It went on to say that

'in addition, effective for transactions completed on or after 14 October 2017, Reason Code 53 is available where the merchant refuses to allow the cardholder to withdraw available balances and the cardholder can provide a copy of the investment account statement showing the date, withdrawal amount and available balance at the time the withdrawal request was made'.

For Reason Code 53, Visa required chargebacks to be processed within 120 days of the transaction processing date or the date the cardholder expected to receive the merchandise or services. But in any event, no later than 540 calendar days from the Transaction Processing date. In X's case, he received the service when his funds credited the trading account (which was the same date as the transaction processing date), so by the time he contacted HSBC to process chargeback claims (for all transactions prior to 14 October 2017) he was too late. But even if I'm wrong on this point, he would have required specific evidence that he did not have for HSBC to have assisted him with processing chargeback claims.

The same follows for the transactions processed after 14 October 2017. X didn't have the required evidence for HSBC to have assisted with chargeback claims on his behalf. Because of this, I don't think HSBC acted unreasonably by failing to process chargeback claims on his behalf. With that being said, it could have handled X's chargeback claims better and for the reasons I've already explained, HSBC should pay £500 compensation to recognise the trouble and upset this matter caused X.

I recognise this will come as a great disappointment to X given the sums he's lost here. But I don't think HSBC could have prevented the loss for the reasons I explained in my provisional decision, nor do I think it could have recovered his losses via the Visa chargeback scheme.

Because of this, I don't think that HSBC is liable to return X his losses.

My final decision

My final decision is that HSBC UK Bank Plc should pay X £500 to recognise the trouble and upset the matter caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 22 July 2022.

Dolores Njemanze
Ombudsman